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DEPARTMENT OF TRANSPORTATION AND DEVELOPMENT
INTRADEPARTMENTAL CORRESPONDENCE

January 27, 2011

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To: Mr. Richard L. Savoie, P.E.
Chief Engineer

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From: Nick Kalivoda III, P.E. *NK III*
Traffic Engineering Development Administrator

Subject: Policy for new access to controlled access facilities

Please find attached a policy which will govern how new access to controlled access facilities will be evaluated. The policy was developed in response to FHWA's letter to Secretary Sherri LeBas dated September 28, 2010, copy attached.

The policy consists of an introduction, legal references, background, process, and dispute resolution sections. The process includes developing a memorandum of understanding (MOU) so that the requirements for the study are established before work effort proceeds, something FHWA considers best practice.

This policy incorporates changes that were recommended by a committee that was convened on January 6, 2011 to review the new policy and process. Comments received since then from FHWA have also been addressed.

Your approval of this policy is hereby requested.

NKIII
Attachments

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The Louisiana Department of Transportation & Development
Policy for evaluating new access to controlled access facilities

I. Introduction

Controlled access highways, the highest class of highways within the highway transportation network, are highly regulated to ensure that high volumes of people and goods will be moved safely and efficiently both currently and in the foreseeable future. Ramps and interchange crossroads near the interchange are part of that system. Therefore, requests for new access will undergo a thorough evaluation and will receive a high degree of oversight. A change in the control-of-access on any controlled-access facility (Interstate and non-Interstate) must be approved by the Chief Engineer and Federal Highway Administration. New interchanges are governed by the following legal authority and EDSM I.4.3.2, also on LDOTD's website.

II. Federal legal references

23 U.S.C. 111

23 U.S.C. 315

49 CFR 1.48

74 FR (Federal Register) 165 – August 27, 2009

III. Excerpts from Louisiana law that apply to controlled-access facilities

R.S. 48:1(12) "Limited-access facility":

"Limited-access facility" is a highway or street especially designed for through traffic, over, from, or to which owners or occupants of abutting land or other persons have no right or servitude or only a limited right or servitude of access, light, air, or view by reason of the fact that their property abuts thereupon or for any other reason. These highways or streets may be parkways, from which trucks, busses, and other commercial vehicles shall be excluded; or they may be freeways open to use by all customary forms (of) street and highway traffic.

R.S. 48:301. Authority to establish and regulate controlled-access facilities:

The highway authorities of the state, parishes and municipalities of Louisiana, acting alone or in cooperation with each other or with any federal, state, or local agency or any other state having authority to participate in the construction and maintenance of highways, may plan, designate, establish, regulate, vacate, alter, improve, maintain and provide controlled-access facilities for public use whenever they determine that traffic conditions, present or future, justify such special facilities. However, within municipalities, the exercise of this power is subject to such municipal consent as is necessary by law.

In addition to the specific powers granted in this Part, they also have, relative to controlled-access facilities, all additional authority now or hereafter vested in them relative to highways or streets within their respective jurisdictions. They may regulate, restrict, or prohibit the use of controlled-access facilities by the various classes of vehicles or traffic in a manner consistent with R.S. 48:1(12).

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RS: 48:302. *Design of controlled-access facility; right of access:*

The highway authorities may design any controlled-access facility and regulate, restrict, or prohibit access so as to best serve the traffic for which it is intended. The authority's determination of that design is final.

They may divide and separate any controlled-access facility into separate roadways by the construction of raised curbs, central dividing sections, or other physical separations, or by designating the separate roadways by signs, markers, stripes, and the proper lane for such traffic by appropriate signs, markers, stripes and other devices. No person has any right of access to, from or across controlled-access facilities to or from abutting lands, except at the designated points at which access is permitted upon the terms and conditions specified from time to time.

IV. Background

Over the years many reasons have been given to try and gain approval to add or modify an interchange. Some reasons have been given before the required documentation has been developed. Other reasons have been given after the documentation was prepared but before the Department had a chance to review it or obtain the necessary approvals. Some common arguments used to try and justify new access to controlled access facilities follow:

- A new interchange would improve the economy.
- A new interchange would improve access to the interstate system.
- A new interchange would reduce congestion on the local network.
- The new interchange is approved because the interchange justification report is complete.
- A new interchange can be built because the sponsor has money available.
- A new interchange is warranted because the development / anticipated traffic volumes are large.
- A new interchange would spread out traffic on the highway transportation network.
- Much work has already been done on the new interchange.
- Construction plans for the interchange have already been started.
- Agreements with property owners have already been completed.
- The interchange is included in the local transportation plan.
- Right of way for the interchange has already been acquired.
- The sponsor will provide mitigation for the new interchange.
- The sponsor wants a new interchange.

The reality is that none of these reasons or others will gain approval for new access. A new interchange can only be approved after a) compliance with the Department of Transportation and Development's (DOTD's) and the Federal Highway Administration's (FHWA's) legal requirements, process, guidance, and procedures, b) addressing comments to the satisfaction of the agencies, c) completing the required documentation, and d) providing funding for construction.

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Because there is so much misinformation about how new access is approved, the Department has documented the process that is required. Although the process is written to cover most situations, it may be necessary to perform additional work for some situations and less work for others. The decision to omit steps will be determined by DOTD and FHWA on a case by case basis.

V. Process

The steps in the process are as follows:

1. An introductory meeting(s) will be held with DOTD Headquarters Traffic Engineering personnel, DOTD upper management, and FHWA personnel so the sponsor of the new interchange can discuss planned development and/or new access. DOTD upper management will consist of the Secretary, Undersecretary, Chief Engineer, Assistant Secretary of Planning & Programming, etc. FHWA upper management will consist of the Division Administrator who may invite members of his staff. The sponsor can either be a private developer or a public entity within the state. DOTD will determine within 30 days after the meeting whether an interchange study should proceed. If the Department agrees to proceed, it will be decided who will perform the required study and pay for it. The interchange justification (or modification) report will be considered the Stage 0 study for studies involving new interchanges (or modified access to existing interchanges).

Although a project number and project manager may be assigned to the study effort, the proposed change in access does not become an actual project unless a) the interchange justification report (IJR) or interchange modification report (IMR) is completed with DOTD & FHWA guidance, b) the environmental process is completed, c) the new access is approved by both agencies, and d) a full construction funding source is established.

2. The Traffic Engineering Development Section at DOTD Headquarters will schedule an initiation meeting with the sponsor, the MPO / local public agency, and FHWA to discuss the proposed access point and the IJR / IMR that must be prepared in order for the Department to determine whether new or modified access will be recommended to the Federal Highway Administration for approval. Topics, as shown on Attachment A, will be discussed at the meeting to help guide the work effort. A consultant may be brought to the meeting.

The limits of the study area for the new interchange will be agreed to by the agencies (i.e. MPO/local public agency, DOTD, & FHWA). The limits will be based on information from initial MPO travel demand model runs, if the proposed interchange is located within an MPO area, and input from the agencies.

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3. Consultant services are secured, unless the study will be performed by DOTD. With the exception of a few metropolitan planning organizations (MPOs), local agencies typically are not allowed to administer federal transportation funds.
4. A memorandum of understanding (MOU) will be prepared based on the decisions made in step 2 above and then will be signed by the local public agency, the MPO executive director (if the proposed access is in an MPO area), DOTD, and FHWA.
5. The sponsor will submit traffic data for the study area to DOTD for review and distribution as needed. Review comments will be provided within 45 days (estimated). The local public agency / consultant addresses comments in writing. DOTD reviews the responses to those comments in 7 to 30 days (estimated) and responds.
6. Traffic, safety, geometric, operational and other appropriate analyses are performed and preliminary interchange design concepts developed. Both are submitted to DOTD who will provide review comments in 60 days (estimated). . The sponsor may be required to develop and evaluate additional concepts.

The sponsor addresses comments and resubmits for review. Responses will be reviewed within 30 days (estimated), unless new concepts are developed, in which case a 60 day review time (estimated), as stated previously, will be required. This process is an iterative one that may take several submittals and reviews.

The length of time required to respond depends on interchange complexity, traffic volumes, constraints, location, and agency workload. New traffic volumes may have to be developed during this process. If they are, design concepts that were submitted initially may have to be re-evaluated.

7. The sponsor submits the draft report containing all concepts that have been evaluated. Review comments will be provided within 60 days. If additional concepts are requested, they will be evaluated and included in the final report.
8. The sponsor submits the final report to the Department requesting permission to add or modify access to the interstate / controlled access highway system along with information on how the access improvements are to be funded and what they cost.
9. DOTD staff that is assigned to the work effort will submit the report to the Access Review Board of the Department of Transportation and Development with a recommendation to either support or deny the requested access. (The Assistant Secretary of Planning and Programming will be copied on the transmittal correspondence.)

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Any stipulations / conditions that are considered necessary to support the request will be furnished as well. The Access Review Board will consult with the Assistant Secretary of Planning and Programming during their review.

If the Access Review Board has comments, those will be forwarded to the sponsor for inclusion in the final report, and then the report will be returned to the Board.

10. The Access Review Board submits the report to the DOTD Secretary with its recommendation to either support or deny the access.

If the Secretary supports the requested access, and project funding is available, then DOTD will send a letter of support to the FHWA Division Office requesting approval for a new or modified interchange access point(s).

If the Secretary supports the requested access, but project funding is not available, then the report will be sent to FHWA, but only for a review of the engineering and operations aspects of the proposed project.

11. The FHWA Division Office conducts an independent evaluation within 30 days and sends comments to DOTD to be addressed. After comments have been addressed, a determination on the requested access will be made by the FHWA Division Office.

However, if the requested access is located within a metropolitan area that has a population greater than 200,000, the Division Office will first send the request to the Federal Highway Administration Office of Infrastructure for their review.

The Office of Infrastructure will typically respond within an additional 30 days. Any comments that are furnished must be addressed, even if the evaluation of additional concepts is necessary.

12. After all comments have been addressed, FHWA will respond to the request. If the Department requested new access, then the Department's request will either be denied, or approved subject to compliance with the National Environmental Policy Act. If the Department requested a review of the engineering and operations aspects of the proposed access, then the Department's request will either be determined to be acceptable or unacceptable. If the NEPA process results in additional configurations or solutions, additional analysis for those alternatives will be required.

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13. An environmental document is prepared following the National Environmental Policy Act (NEPA) procedures and is submitted to both agencies for review. Both agencies provide review comments. In non attainment areas, an air quality transportation conformity analysis will be required. The NEPA process could take 1 year or more to complete.
14. The proposed project must be included in the local Transportation Improvement Program (TIP) (if within an MPO region), and in the State Transportation Improvement Program (STIP).
15. Final interchange access point approval is given by FHWA after NEPA approval.
16. Design plans are started for the full interchange project (partial interchanges are not allowed). The interchange typically cannot be constructed in different construction contracts.

For questions about access to controlled access highways contact Traffic Engineering Development at 225-379-1380.

VI. Dispute Resolution

Disputes that cannot be resolved may be appealed according to the following process:

Step 1. The Sponsor will send a formal letter containing a description of the dispute to the Project Manager. The letter will contain a statement(s) indicating what actions are needed to resolve the dispute. The Project Manager will discuss the matter with the DOTD team members and then formally respond indicating how the dispute will be resolved. If the response is deemed unacceptable, the sponsor may proceed to Step 2.

Step 2. The sponsor will send a formal request, with previous letters attached, to the Access Review Board. The Board will respond indicating how the dispute will be resolved. If the response is deemed unacceptable, the sponsor may proceed to Step 3.

Step 3. The sponsor will send a formal request with previous letters attached to the Chief Engineer who will discuss the request with FHWA and render a final decision. No further appeals will be allowed.

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Attachment A

Meeting Discussion Topics for New Access to Controlled Access Facilities

(Note: This list of topics is not all inclusive and will be expanded as needed.)

1. Time required to prepare an interchange justification/modification report:
2. Interchange design concepts:
3. Risk of new access not being approved:
4. Federal Highway Administration Requirements:
5. Risk of Federal Highway Administration approval expiring:
6. Funding for a new access point:
7. Implementation Year:
8. Design Year:
9. Area of Influence:
10. Traffic Projections:
11. Traffic Software:
12. Approval of Traffic Data:
13. Traffic Factors:
14. Traffic Counts:
15. Traffic Schematics:
16. Conceptual Interchange Layouts:
17. EDSM I.4.3.2:
18. Interchange Justification Report content: